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MICHAEL A. FAILLACE, ESQ.  
MICHAEL FAILLACE & ASSOCIATES, P.C.  
110 East 59<sup>th</sup> Street, 32<sup>nd</sup> Floor  
New York, New York 10022  
(212) 317-1200  
Attorneys for Plaintiffs

PETER A. WALKER, ESQ. (PW-7984)  
JACQUELYN G. WHITE, ESQ. (JW-4168)  
SEYFARTH SHAW LLP  
620 Eighth Avenue  
New York, New York 10018  
(212) 218-5500  
Attorneys for Defendants

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ANGELO PENA, ROLANDO ROJAS, JOSE  
DIROCHE, and FRANKLIN SANTANA,  
individually and on behalf of others similarly  
situated,

Plaintiffs,

v.

SP PAYROLL, INC., NICHOLAS PARKING,  
CORP., IVY PARKING, CORP., BIENVENIDO,  
LLC, CASTLE PARKING CORP., SAGE  
PARKING CORP., and SAM PODOLAK,

Defendants.

CIVIL ACTION NO.: 07-CV-7013 (RJH)

**JOINT DISCOVERY PLAN**

Plaintiffs Angelo Pena, Rolando Rojas, Jose Diroche and Franklin Santana (collectively, "Plaintiffs") and defendants SP Payroll, Inc., Nicholas Parking, Corp., Ivy Parking, Corp., Bienvenido, LLC, Castle Parking Corp., Sage Parking Corp., and Sam Podolak (collectively, "Defendants"), having conferred in accordance with Fed. R. Civ. P. 26, submit the Joint Discovery Plan set forth below.

**1. Description of the Case**

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a. Attorneys of record for each party, including lead trial attorney.

Michael Faillace, Esq. (Lead Trial Attorney)  
Michael Faillace & Associates, P.C.  
110 East 59<sup>th</sup> Street, 32<sup>nd</sup> Floor  
New York, New York 10022  
Phone: (212) 317-1200  
Fax: (212) 317-1620  
*Attorneys for Plaintiffs*

Peter A. Walker, Esq. (Lead Trial Attorney)  
Jacquelyn G. White, Esq.  
Seyfarth Shaw LLP  
620 Eighth Avenue  
New York, NY 10018  
Phone: (212) 218-5500  
Fax: (212) 218-5526  
*Attorneys for Defendants*

b. Basis for federal jurisdiction.

The parties agree that the Court has federal subject matter jurisdiction over Plaintiffs' federal claims pursuant to 29 U.S.C. § 216(b) of the Fair Labor Standards Act ("FLSA") and 28 U.S.C. § 1331. As set forth below, the defendants reserve the right to assert that plaintiffs' supplemental state class claims under Rule 23 of the FRCP are not properly before the Court.

c. Brief description of claims asserted in the complaint and any counterclaims.

Plaintiffs, current and former parking lot attendants, claim that Defendants violated the FLSA, 29 U.S.C. § 201 *et seq.* and the New York Labor Law by failing to pay them the minimum wage and overtime compensation for hours worked in excess of forty hours per week. Plaintiffs also claim that Defendants violated the spread of hours and overtime wage orders of the New York Commissioner of Labor, 12 N.Y.C.R.R. §§ 142-2.2, 142-2.4. For all claims, Plaintiffs purport to bring a collective or class action on behalf of themselves and others similarly situated. In connection with the purported violations of the FLSA, Plaintiffs seek to maintain an opt-in, representative action pursuant to Section 216(b) of the FLSA. With respect to the state law claims, Plaintiffs seek to certify a class pursuant to Rule 23 of the Federal Rules of Civil Procedure.

Defendants deny Plaintiffs' allegations in their entirety, and aver that they acted in accordance with any and all duties and obligations they had under the FLSA and New York law.

d. Major legal and factual issues in the case.

i. Whether Plaintiffs are similarly situated to or otherwise an adequate representative for the persons whom they purport to represent such that they can establish the requirements for a collective action under 29 U.S.C. § 216.

ii. Whether Plaintiffs can satisfy the prerequisites for maintaining a class action under Fed. R. Civ. P. 23.

iii. Whether Defendants failed to pay Plaintiffs the minimum wage required under the FLSA and/or New York state law.

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- iv. Whether Defendants failed to pay Plaintiffs overtime compensation in accordance with the FLSA and/or New York state law.
- v. Whether the New York State legislature has provided for a private right of action for overtime claims under New York State law.
- vi. Whether liquidated damages or penalties are permitted in a class action arising under New York State law.
- vii. Whether both an opt-in collective action under Section 216(b) and an opt-out class action under Rule 23 of FRCP can be maintained in the same action.
- viii. Whether Defendants failed to pay Plaintiffs spread of hours pay in accordance with New York state law.

e. Description of relief sought.

Plaintiffs seek compensatory and liquidated damages for allegedly unpaid minimum and overtime wages under the FLSA and New York state law, as well as spread of hours pay under state law. Plaintiffs also seek prejudgment interest and expenses incurred in this action, including costs and attorneys' fees.

Defendants seek dismissal of Plaintiffs' Complaint on the merits with prejudice in its entirety, and the award of costs and disbursements, including reasonable attorneys' fees incurred in this action.

2. Proposed Case Management Plan

- a. Pending Motions. None.
- b. Cutoff date for joinder of all additional parties. See Section 2.d.iv. below.
- c. Cutoff date for amendments to pleadings. October 31, 2007.
- d. Schedule for Completion of Discovery:

The parties propose a two-phase discovery plan consisting of pre- and post-class certification/notification phases. Specifically, the parties propose approximately three (3) months of fact discovery prior to Plaintiffs' application for class certification and notice authorization, and approximately four (4) months of fact discovery with respect to any plaintiffs who "opt-in" to the FLSA 216(b) class, and on issues related to any Rule 23 class members. This discovery would include depositions of anyone who opts into the FLSA 216(b) class. A proposed discovery schedule is set forth below:

- i. Last day to exchange Rule 26(a)(1) disclosures: October 12, 2007.

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ii. Phase I fact discovery cutoff and motions for class certification and notice to any putative class under 29 U.S.C. § 216(b) and/or under Fed. R. Civ. P. 23 to be filed and served on or before December 17, 2007.

iii. Defendants' opposition to Plaintiffs' motion for class certification and notice to any class under 29 U.S.C. 216(b) and/or under Fed. R. Civ. P. 23 to be filed and served on or before January 15, 2008.

iv. Close opt-in class under 29 U.S.C. § 216(b) thirty (30) days after notices sent;

v. Phase II fact discovery cutoff, designation of Plaintiffs' experts and service of any expert reports on or before April 4, 2008;

vi. Defendants to make any Rule 26(a)(2) disclosures and serve any expert report(s) on or before April 30, 2008;

vii. All expert discovery to be completed on or before May 10, 2008;

c. Date for filing of dispositive motions.

i. Dispositive motions to be served on or before May 15, 2008.

ii. Opposition papers to dispositive motions to be served on or before June 6, 2008.

iii. Reply papers to opposition to dispositive motions to be served on or before June 16, 2008.

f. Date for filing of final pretrial order. June 30, 2008.

g. Trial schedule

i. Plaintiffs demand a trial by jury, and Defendants do not dispute that this matter should be tried by one.

ii. It is premature for the parties to anticipate the probable length of trial without a determination of the number of plaintiffs included in this action.

iii. Date when case will be ready for trial. July 18, 2008.

3. **Consent to Proceed Before a Magistrate Judge**

The parties do not consent to this case proceeding before a Magistrate Judge.

4. **Status of Settlement Discussions**

The parties have not engaged in settlement discussions, but are willing to utilize the Court's mediation program.

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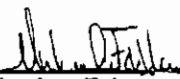
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Dated: New York, New York  
September 18, 2007

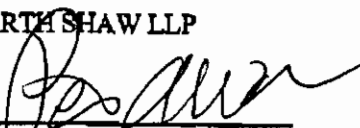
Respectfully submitted,

MICHAEL FAILLACE & ASSOCIATES, P.C.

SEYFARTH SHAW LLP

By:   
Michael A. Faillace (MF-8436)  
110 East 59<sup>th</sup> Street, 32<sup>nd</sup> Floor  
New York, New York 10022  
(212) 317-1200


Attorneys for Plaintiffs

By:   
Peter A. Walker (PW-7984)  
Jacquelyn G. White (JW-4168)  
620 Eighth Avenue  
New York, New York 10018  
(212) 218-5500 / Fax (212) 218-5526

Attorneys for Defendant

*A status conference shall be held on  
April 18<sup>th</sup>, 2008 at 10:00 AM*

SO ORDERED:

  
The Honorable Richard J. Holwell  
United States District Judge

Dated: New York, New York  
September 18, 2007